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JUN 16 2005

In re Application of
Joseph P. Salanitro et al
Application No. 10/828,754
Filed: April 21, 2004
Attorney Docket No. TH1006 05

OFFICE OF PETITIONS

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: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3)
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This is a decision on the petition under 37 CFR 1.78(a)(3), filed October 29, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application (Application No. 10/303,632) set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED AS MOOT**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii).

While this application was filed after November 29, 2000, a review of the file record discloses that a claim for priority to the above-noted, prior-filed, nonprovisional application was made in a preliminary amendment filed concurrently with the instant application. Therefore, as the claim for priority to Application No. 10/303,632 was timely made within the period set forth in 37 CFR 1.78(a)(2)(ii) (i.e., within four months from the actual filing date of this application), a petition under 37 CFR 1.78(a)(3) is not required. Accordingly, the petition is unnecessary and is dismissed as involving a moot issue.

It is noted that the preliminary amendment filed with the application on April 21, 2004, included a claim for priority to Application Nos. 10/303,632 and 09/549,981, while the amendment submitted with the petition makes reference only to Application No. 10/303,632. If petitioner did not intend to delete the reference to Application No. 09/549,981, then petitioner should take steps to clarify the record.

It is further noted that the Filing Receipt issued in this application sets forth a benefit claim to provisional Application No. 60/129,328, which claim appears in the declaration submitted on

filing. However, the file record fails to disclose that an amendment to the first line of the specification or an Application Data Sheet is present in the application. While the Office picked up the reference, as noted by its inclusion on the Filing Receipt and, thus, no petition under 37 CFR 1.78(a)(6) is required, petitioner must make a reference to the prior-filed provisional application in an amendment or in an Application Data Sheet.

The 'PETITION FOR CERTIFICATE OF CORRECTION UNDER 37 CFR 1.323 (PATENT AND TRADEMARK OFFICE MISTAKE),' filed November 8, 2004, is being treated as a request for a corrected Filing Receipt. The correction has been made and a corrected Filing Receipt accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Irvin Dingle at (571) 272-3210. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 1724 for examination in due course.

A handwritten signature in cursive script, reading "Frances Hicks".

Frances Hicks
Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner
for Patent Examination Policy